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Crl.O.P.No.17160 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.07.2024

CORAM

THE HONOURABLE DR.JUSTICE **G.JAYACHANDRAN**

Crl.O.P.No.17160 of 2024

and

Crl.M.P.No.10305 of 2024

K.Karthick Kamaraj

... Petitioner

Vs.

Po.Ramesh

... Respondent

Prayer: Criminal Original Petition is filed under Section 482 of Criminal Procedure Code, pleaded to set aside the order passed in Crl.M.P.No.28873 of 2024 in STC.No.5412 of 2021 dated 05.06.2024 on the file of the Metropolitan Magistrate Fast Track Court No.2, Allikulam, Egmore, Chennai.

For Petitioner : Mr.Shaik Mehrunisa

ORDER

The petitioner herein is the accused in a criminal complaint instituted under Section 138 of Negotiable Instruments Act and taken cognizance by the Metropolitan Magistrate Fast Track Court No.2, Allikulam, Egmore, Chennai in STC.No.5412 of 2021.



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2. After examination of defence witnesses, the accused has filed an application to summon the Managing Director of Flotron India Home Finance, the Manager of HDFC bank, the Manager of Indus Ind bank and one Manoj in respect of bank transaction dated 27.12.2016 and 25.06.2019, consequentially to summon them to produce those documents under Section 91 Cr.P.C.. The said application was opposed by the complainant stating that the reason to summon these witnesses and the documents are unrelated to the complaint. Some of the documents sought to be summoned are already been marked as exhibits by the complainant. Further, the accused himself has graced the witness box and has put forth his defence. While he has not stated anything about the transaction referred in the recall petition and the present petition is filed only to protract the proceedings.

3. The Judicial Magistrate, after considering the rival submissions, has dismissed the application on the ground that the witnesses sought to be summoned are no way connected with the cheque



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which is the subject matter of the complaint and the petition has not explained how the documents and the witnesses sought to be summoned have any relevance to the complaint.

4. Being aggrieved by the order of dismissal, the present petition is filed under Section 482 of Cr.P.C..

5. According to the learned counsel appearing for the petitioner, the examination of the witnesses mentioned in the petition is essential to discharge the burden of proof. Marking of documents Ex.D1 to Ex.D3 and examination of accused will not denude the right of the accused to summon the bank Manager and the parties to the transaction mentioned in the complaint.

6. The case of the complainant is that the complainant is the builder by profession and the accused has invested in purchasing a flat from the complainant. In the course of the said transaction, the accused paid a sum of Rs.37,23,476/- and Rs.15,47,618/- through bank. Thereafter, the accused induced the complainant to transfer a sum of



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Rs.19,00,000/-. Accordingly, the amount was transferred to the account of the accused. Thereafter, after completing the project, the complainant sought for return of the money which the accused failed. Thereafter, he undertook to repay the money and issued two cheques bearing Nos.572389 & 572390 dated 25.06.2019. The said cheques on presentation got bounced.

7. The grievance of the accused, who is the petitioner herein, is that Rs.19,00,000/- paid to the complainant towards excess amount paid to the consideration of the flat and therefore, there is no liability. To prove the said fact, the bank Manager of HDFC bank and one Manoj are necessary and the statement of accounts of Flotron is necessary.

8. This Court on perusing the record finds that the complaint itself clearly indicates how the liability arose and the accused had not denied the cheques or his signature found in the subject cheques. As pointed out by the trial Court whatever the fact necessary and relevant to establish the case of the complainant been stated in the complaint and has he mounted in the witness box and marshalled their witnesses. If



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there is any omission on his part to establish his foundational fact of the enforceable liability which is going to be deserted to the complainant and not to the accused. The examination of bank Manager can no way help the accused to substantiate his defence that the cheque dated 25.06.2019 which is the subject matter of the complaint, was not issued by him or not issued to discharge the liability payable to the complainant. Therefore, this Court finds no error in the findings of the trial Court dismissing the application filed under Section 311 and 91 Cr.P.C.

9. Hence this Criminal Original Petition is dismissed. Consequently, the connected Criminal Miscellaneous Petition is also dismissed.

23.07.2024

Index : Yes/No
Neutral Citation : Yes/No
rpl

To

The Metropolitan Magistrate Fast Track Court No.2, Allikulam, Egmore, Chennai.



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Dr.G.JAYACHANDRAN,J.

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